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ATTENTION MRS. MULLETT
 Keep this study together.

SADIXEDDEPARTMENT OF STATE
Washington, D.C. 20520

January 8, 1972

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MEMORANDUM FOR MR. HENRY A. KISSINGER
 THE WHITE HOUSE

Subject: Fisheries Dispute with Ecuador,
 Peru and Chile

In his memorandum to you of January 6, 1972, Under Secretary Irwin recommended that in view of the restraint the Peruvian Government had shown throughout 1971, in which it seized only one American fishing vessel, the United States Government be prepared to consider lifting the FMS suspension to Peru without any pre-conditions other than an indication that the Peruvian policy of restraint will be continued in the future. This memorandum is in response to the January 7 request of the NSC Staff that the Department elaborate its reasons for treating Peru and Ecuador differently with respect to the lifting of FMS, discuss the legal bases for such action, and comment on the tactical implications for the Ecuadorean discussions that different treatment of Peru might have.

The contrast between Ecuador and Peru when measured by numbers of vessels seized is quite stark. Ecuador has seized fifty-one to Peru's one. That this difference merits different treatment has been recognized since March 31, when the Department was informed by the NSC Staff that any decision to suspend FMS as a result of the March 30 seizure was to be submitted to the President for decision. In accordance with these instructions to defer application of any sanctions against Peru, the Department has not yet formally applied the suspension of FMS eligibility called for

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 PA/HO Department of State
 E.O. 12958, as amended
 July 12, 2005

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Authority	MD 969044
By	CO NARA Date 5/6/09

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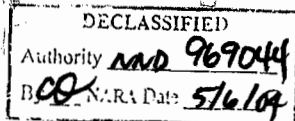
in the FMS Act. Neither has it been formally waived. Since April 3, FMS to Peru has been held "under review". The de facto result of the review has been that no new FMS letters of offer, sales agreements, related commitments, or price and availability data are being issued to Peru. Moreover, the claim submitted by the vessel seized on March 30 was certified by the State Department and paid by Treasury on December 23, 1971. In these circumstances, we believe that a formal waiver of the FMS suspension is necessary with respect to Peru. It should be noted that by the provisions of the Act, the suspension would cease to be effective as regards Peru on March 30, 1972, if there were no seizures between now and then.

The recommendation made in the Under Secretary's memorandum is not significantly different from the recommendation we made to the President on August 4, 1971, when we proposed that, while Ecuador was to respond affirmatively on a number of items before FMS could be waived, application of the FMS sanction to Peru should be waived in return for "cooperation". The President approved the Ecuadorean scenario with its more lenient treatment for Peru on August 12, 1971.

In the present scenario for resolving the fishing dispute with Ecuador and Peru, as in the August 1971 scenario, the Department has based its recommendations with respect to the lifting of FMS on the fact that Section 3(b) of the Foreign Military Sales Act, under which the suspension was applied, offers two avenues of relief. These are, a Presidential determination that a waiver of the suspension is "important to the security of the United States", or receipt by the President of "reasonable assurances from the country involved that future violations will not occur..." On both occasions, the Department has recommended that the "reasonable assurances" route be utilized, believing that a national

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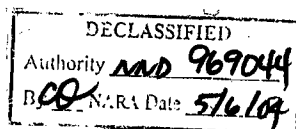
security waiver for Peru, but not Ecuador, places us in the position of having to make distinctions between countries which would be difficult, if not impossible, to explain and which, extended to the potential problem with Brazil, might seriously complicate our relations with that country if similar relief were not quickly forthcoming should that country begin to seize vessels in the absence of a solution to our fisheries problems on the East Coast of South America.

The recommendation that the President be prepared to waive the suspension of FMS to Peru on a "reasonable assurances" basis, more generous than that we are offering Ecuador, proceeds from our view that more generous treatment is warranted, and can be offered without serious effect on the negotiations with Ecuador. In addition, even if the negotiations with Ecuador should fail, there would still be some chance that Peru would not resort to seizures.

That Peru expects to be treated differently is demonstrated clearly by the record of Peruvian approaches at various levels of the USG throughout the last several months. In Lima, Peruvian military officials made clear to our Ambassador on several occasions in late 1971 that the denial of access to FMS was causing great strain to traditional service-to-service relationships with the Armed Forces of the United States. In addition, during November and December, as a background to the Finch-Meyer and subsequent Meyer-Stevenson trips, the Peruvian Armed Forces, both in Lima and Washington, presented lists of substantial amounts of military equipment which they wished to obtain under the Foreign Military Sales Act. In Washington, the Peruvian Embassy began to indicate to the Department, starting in early October, that there was a link between Peruvian restraint with respect to seizures and renewed access to FMS. In December, the Peruvian Embassy warned that the policy of restraint was coming under increasing criticism within the Peruvian Government and that moderate elements

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responsible for it needed evidence of its effectiveness. The Embassy made clear that access to FMS was that evidence. Also in December, the Peruvian Foreign Minister told our Ambassador that Peruvian authorities had ignored the presence of American tuna boats in Peruvian waters but that, because of increasing pressures, further restraint with respect to seizures could no longer be guaranteed. Up to the present time, however, the Peruvian Embassy continues to make clear renewed access to FMS will encourage moderation and continued restraint in spite of the fact that the tuna fishing season has begun.

The Foreign Military Sales Act requires that the President report his waiver action to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate. Consequently, a waiver for Peru, and the basis on which it was made, would become public knowledge. The Peruvian Government may decide that, in the interest of solidarity with Ecuador and Peru's acknowledged leadership of the 200-mile club, it cannot risk being the beneficiary of a "reasonable assurances" waiver. There is, therefore, no guarantee that Peru, even if it indicates its willingness to exercise restraint on seizures, will accept an offer to exchange FMS for restraint. There is no cost to the U.S. in making the offer. If it is accepted, we will have effectively demonstrated to both Ecuador and Peru that we are prepared to make distinctions between countries that seize 51 vessels, and those that seize one, we will have reduced the ability of Peru to join Ecuador in any repetition of the charges of economic aggression before the OAS, and we will have created the possibility that although there may be fishing vessel seizures off the coast of Ecuador if negotiations fail, there may be none off Peru.

The Department of Commerce, which supports the recommendation in the Under Secretary's memorandum of

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Authority <i>AND 969044</i>
By <i>CO</i> NARA Date <i>5/6/09</i>

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January 6, intends to submit separate comments in response to the NSC Staff memorandum of January 7. The Department of Defense is submitting its views separately.

Theodore L. Eliot Jr.
Theodore L. Eliot, Jr.
Executive Secretary

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Clearances:

ARA/EP:Mr. Weber
ARA:Mr. Crimmins (draft)
L:Mr. Stevenson (draft)
S/FW:Ambassador McKernan (substance)
U:Mr. Custer *OK*

INFORMED:

Commerce: (NOAA) Mr. Johnson
DOD:Mr. Carter

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